



## **FORT SAM HOUSTON LEGAL ASSISTANCE OFFICE**

### **PROBATE**

**I. INTRODUCTION** - Probate is the legal process that insures the legitimate and orderly transfer of property at a person's death. This involves the proving of someone's passing, a determination of whether a document is a valid will or, in its absence, who the lawful heirs are, and the updating of transferable title while protecting the rights of legitimate creditors.

In Texas there are many types of Probate, but these can be sorted into a few basic categories. When there is a "necessity for administration" such as when there are debts that must be handled, or there is property which must be managed or sold, an Independent or Dependent Administration is usually used. If the decedent died without a Will the only process available through this office is Small Estate Administration. The various forms of administration will be discussed in greater detail below.

**II. IS PROBATE NECESSARY** – Unless other very specific arrangements have been made, expect to go through some form of probate when a relative or friend dies. However, an actual probate proceeding is not necessary when a person dies leaving only "Non-probate property", such as a jointly owned vehicle, checking, savings or investments that have "Right of Survivorship". These assets are intended to pass, by law, to the surviving co-owner. Furthermore if any of the financial assets, jointly owned or not, are Payable on Death (POD) to a beneficiary other than the deceased, these assets would also transfer without the necessity of probate.

**III. REASONS FOR PROBATE** - One of the main reasons Probate is necessary is to update the title to property so that at some point down the road it may be sold. Title, or written documentation of ownership, is often required with real estate, vehicles, investments, and bank accounts. In some instances, this can occur without Probate by the mere presentation of a death certificate and/or Affidavit of Heirship. However, in most cases, property will require some form of Probate in order to verify and update who the rightful owners are.

#### **IV. VENUE FOR PROBATE OF WILLS AND ADMINISTRATION OF DECEDENT'S ESTATE**

The criteria for location of where a decedent's estate will be probated is as follows:

- (1) In the county where the deceased resided, if he had a domicile or fixed place of residence in the State.
- (2) If the deceased had no domicile or fixed place of residence in this State, and died in this State, then either in the county, where his principal property was at the time of his death, or in the county where he died.
- (3) If he had no domicile or fixed place of residence in this State, and died outside the limits of this State, then in any county in this State where his nearest of kin reside.

- (4) But if he had no kindred in this State, then in the county where his principal estate was situated at the time of his death.
- (5) In the county where applicant resides, when administration is for the purpose only of receiving funds or money due to a deceased person or his estate from any governmental source or agency.

**V. SUMMARY FORMS OF PROBATE** - When a person dies leaving probate property, you may proceed in four different ways: Supervised, Unsupervised and Small Estate Administration. These three are available in most states, although they may have different names such as Formal, Informal and Summary Administration

**A. Supervised Administration** – When the executor or personal representative of the estate is under close supervision and control of the court and is not allowed independent action. Also called Formal, Solemn, Regular or *Dependent Administration*, requires active court approval for selling property or making partial distributions of property to heirs. A State may require supervised administration in cases with (1) large estates, (2) a conflict between heirs, or (3) when the ability of the executor or personal representative, who oversees the estate's administration, is in question. Supervised Administration usually involves more details than the other types of administration and can be more time consuming and expensive.

**B. Unsupervised Administration** - When the executor or personal representative is free from court control and supervision and may take independent action. Also called Informal, Common, Abbreviated, *Independent Administration* requires less court supervision and fewer reporting requirements. In most routine cases this is a good choice because it is very easy, and you can represent yourself.

**C. Small Estate Administration** - Is the simplest procedure, but it applies only when **all** of the following criteria is applicable:

- (1) The decedent died intestate (without a Last Will and Testament);
- (2) the decedent's estate, excluding the homestead and exempt property; does not exceed the aggregate amount of \$50,000;
- (3) thirty (30) days has elapsed since decedent's death;
- (4) the estate liabilities cannot exceed the estate assets (exclusive of liabilities secured by the homestead and exempt property);
- (5) the homestead can be the only parcel of real property of the estate; and
- (6) there can be no petition for the appointment of a personal representative pending or been granted.

**D. When no Administration is Necessary** - In simple cases where there is "no necessity for administration", probate can be quick and inexpensive. In such cases when there is a will, an Application for Muniment of Title may be appropriate, and when there is no Will being offered for probate, a Small Estate Affidavit or Affidavit of Heirship should be considered. At the time of your appointment, the appropriate and most effective form of Probate processing will be determined and explained to you.

## **VI. WHEN ADMINISTRATION IS NECESSARY OR LETTERS ARE REQUIRED**

**A. Letters** - Often you will hear that you need "Letters," either Letters Testamentary or Letters of Administration. "Letters" are actually not as we think of it, but rather a certificate of authority issued by the courts to a personal representative (Executor) of the estate. This will be required when there is a need for administration.

**B. Independent vs. Dependent Administration** - Many reports will have to be filed with the Probate court, including an inventory, appraisement, and list of claims, proof of notice to creditors, as well as reports of any sales of property. In an Independent Administration, many of these requirements do not require advance court approval, court hearings, or other cumbersome and expensive forms of supervision and therefore can be significantly cheaper than a Dependent Administration. In the latter, virtually everything is supervised and controlled. This expensive and slow form of Probate can usually be avoided when a will expressly provides for an Independent Administration or when all the heirs consent to this form of Administration. This office can only assist you with Independent or Small Estate Administration.

## **VII. WHERE TO START**

First relax, and realize that the Probate process is usually a very straightforward and, in many cases, quick and relatively inexpensive process. The Fort Sam Houston *Pro Se* (Self Representation) Probate Program was created with the co-operation of the Administrative Assistants and Judges of Bexar and the surrounding Counties Probate Courts. However, typically, we can assist with your probate processing in any county in the State of Texas. We draft all the appropriate documents in accordance with the Texas Probate Code for your submission to the appropriate Probate Court. To avoid creating a possible tax liability issue, we limit probate estates we assist with to \$1,500,000. These are the procedures you will use to complete the probate process:

**A.** The potential client is provided a list of items needed and information on how to make an appointment entitled, "What You Need To Initiate Probate", which is included as the last page of this handout.

**B.** Once you have gathered all the information or documentation, call the Legal Assistance Office at 221-2353/2282 and make an appointment. (It's imperative that all the requested information and or documentation be provided at the appointment time; otherwise, the necessary probate documents cannot be completed).

**C.** We review this information and make copies of the documents needed to start the proceedings.

**D.** You will receive the appropriate Application for Probate and an instruction sheet called "Probate by Mail". Following the directions on the instruction sheet, you will mail the Signed Application, Original Will, Death Certificate and a check directly to the appropriate County Court.

**E.** In Bexar County, the Legal Assistance Office will coordinate with the Probate Court to establish your court date. The Probate Court Administrative Assistant then sends the receipt for your filing fee, which also confirms your court date, to the Legal Assistance Office. For County Courts other than Bexar County, the procedures for ascertaining court dates will be discussed during your appointment with this office.

**F.** We use appropriate information from the court receipt to prepare all the final documents (Proof of Death, Order Probating Will, Oath, Inventory and Appraisement, and Order Approving Inventory) necessary for your court appearance.

**G.** We will mail you the final documents and the court receipt prior to the court date.

**H.** On the court date, you will meet with the judge, normally in his/her office to execute the appropriate documents necessary to obtain Letters Testamentary or Letters of Administration.

If necessary, Letters Testamentary/Administration (Appointing you as the Independent Executor/Administrator) are then issued by the court, typically on the date of your hearing.

## **VIII. UPON YOUR APPOINTMENT AS EXECUTOR, YOU HAVE ACQUIRED A FIDUCIARY RESPONSIBILITY FOR THE DECEDENT'S ESTATE.**

**A. Duties as Executor** - The duties of the Executor include the obligations to:

1. Safeguard the estate's property;
2. Inventory the property;
3. Submit accounts and inventories to the court as needed or required;
4. Pay the debts and expenses of the deceased (including funeral and burial expenses as well as costs of last illness or outstanding medical bills);
5. Pay any federal or state death taxes; and
6. Distribute the estate to those named in the will or, if no will exists, to the next-of-kin.

**B. Paying Debts, Bills, Expenses** - In general, an estate is responsible for all of the decedent's debts, bills and expenses. These must be paid before any remaining assets in your estate can be given to the heirs under the will. The Executor or Administrator has no duty to pay these costs out of his or her own pocket and is not normally personally liable for the estate's debts. The Executor or Administrator has the duty to release enough of the estate's assets to allow the payment of expenses such as taxes, credit card balances and hospital bills.

**C. Notifying Creditors** - An Executor/Administrator must place a legal notice in the newspaper for the estate's creditor's within 30 days of the granting of Letters. Once this is done, the publisher prepares an Affidavit of Publication and this is put in the court file. Any claims not presented to the Executor or Administrator within six months need not be paid under most state laws. Claims by unsecured creditors not presented within 4 months of receipt of notice are barred under Texas law. Within 2 months of Letters, the estate's representative must also notify each secured creditor or claimant with a recorded lien. Those claims which are valid and which are presented within the four-month period, including debts and expenses known to the Executor or Administrator, must be paid out of the available funds in the estate. This office will prepare all appropriate documents to comply with this section.

**D. Inventory, Appraisement and list of Claims** - Normally, the Executor or Administrator must also, within 90 days of qualifying, file a detailed inventory of the property of the estate, the fair market value of each item on the date of death, and a list of claims due to the estate. Typically, this document will be incorporated in your final documents for availability to the Court on your hearing date.

**E. Estate Account** - The Executor or Administrator should immediately set up an "estate account" at a local bank. There is a small charge for printing the checks showing name, title (Executor/Administrator), the name of the deceased and other information. Having a separate account is a step toward preventing the mixing personal funds and those that belong to the estate.

**F. Life Insurance Proceeds** - For tax purposes, life insurance proceeds are counted as part of the taxable estate if the policy was owned by the deceased. The Executor or Administrator must account for the proceeds of such a policy on the tax returns of the estate. On the other hand, only life insurance proceeds payable to the estate are listed on the inventory filed with the Court. Those policies and proceeds made payable to individual beneficiaries pass by contract, outside of the estate, directly to the named beneficiary.

**G. Homestead, Exempt Property and Family Allowance** - In Texas, the homestead and certain items of exempt personal property are not subject to attachment, execution or forced sale for the payment of debts. To ensure the surviving spouse and children are financially provided for during probate, the court will normally set aside the homestead and exempt property (up to \$60,000 for a family) when it approves the inventory, appraisement and list of claims. If the decedent did not own a homestead or any exempt personal property, the court will set aside a reasonable amount of the estate as an allowance in lieu of the exempt property. In addition, the surviving spouse and children are entitled, based on need, to a family allowance payable out of the estate sufficient to maintain them for 1 year after the decedent's death. Unfortunately, to invoke this option, you must be represented by an attorney, which exceeds the parameters of the Fort Sam Houston Legal Assistance Office *Pro Se* Probate Program.

WHAT YOU NEED TO INITIATE PROBATE CHECKLIST

Executor's Name: \_\_\_\_\_ Appt Date: \_\_\_\_\_ Appt Time: \_\_\_\_\_

1. ORIGINAL WILL                      Yes      No
2. DEATH CERTIFICATE      Yes      No
3. DEED(S) TO ALL REAL PROPERTY      Yes      No
4. TAX APPRAISALS FOR THE ALL ABOVE REAL PROPERTY      Yes      No
5. TITLE TO ANY VEHICLE JOINTLY OR SEPARATELY OWNED      Yes      No
6. BLUE BOOK VALUE FOR THESE VEHICLES (MAY BE OBTAINED FROM A BANK OR LIBRARY)

<u>Year</u>	<u>Make</u>	<u>Model</u>	<u>VIN</u>	<u>Dollar Value</u>
				\$

7. EXECUTOR'S MILITARY ID CARD OR DECEDENT'S DD 214      Yes      No
8. DECEDENT'S MARRIAGE CERTIFICATE      Yes      No
9. WAS DECEASED EVER DIVORCED FROM ANYONE?

**If Divorced:**      Name \_\_\_\_\_ Date of Divorce \_\_\_\_\_

10. CHILDREN BORN AFTER EXECUTION OF WILL?      Yes      No
11. ESTIMATED DOLLAR VALUE AT TIME OF DEATH (Executor's current market value opinion) :

- A. HOUSEHOLD GOODS \$ \_\_\_\_\_
- B. COOKWARE & APPLIANCES \$ \_\_\_\_\_
- C. DECEDENT'S PERSONAL PROPERTY/JEWELRY \$ \_\_\_\_\_

12. BANK ACCOUNTS, INVESTMENT OR STOCKS SEPERATELY OR JOINTLY OWNED AND VALUE AT TIME OF DEATH (Excluding assets with Rights of Survivorship, Pay on Death Accounts, or anything with a designated beneficiary other than the deceased)

<u>Institution</u>	<u>Type (Savings/Checking, etc)</u>	<u>Last four of Acct #</u>	<u>Dollar Amount</u>
			\$
			\$

13. Upon gathering **ALL** the appropriate information and/or documentation, call 221-2282/2353 for an appointment.

Total Real Prop: \$ \_\_\_\_\_ Total Personal Prop: \$ \_\_\_\_\_ Combined Total: \$ \_\_\_\_\_

**NOTE:** The above should reflect any assets jointly or separately owned by decedent or the surviving spouse.